



Building and Development Tribunals
Queensland Government

Department of Local Government, Planning,
Sport and Recreation

APPEAL
Integrated Planning Act 1997

File No. 03-04-052

BUILDING AND DEVELOPMENT TRIBUNAL - DECISION

Assessment Manager: Toowoomba City Council

Site Address: 22 Alford Street, Toowoomba

Applicant:

Nature of Appeal

An appeal under Section 21 of The Standard Building Regulation 1993, against the decision of the Toowoomba City Council to refuse an application for a relaxation to a front road boundary setback for a proposed carport to be constructed on land described as Lot 10 RP64520 and situated at 22 Alford Street Toowoomba.

Date and Place of Hearing: 2.00 PM, Wednesday 25 August 2004 on site
at 22 Alford Street Toowoomba.

Tribunal: Bert Dean

Present: The applicants
Toowoomba City Council representative

Decision

The decision of the Toowoomba City Council not to grant a siting relaxation for a proposed double carport to be constructed at reduced front setback distance is **confirmed**.
The request for the siting relaxation remains refused.

Background

The applicants sought approval from Toowoomba City Council for a siting relaxation to permit the construction of a double, open carport setback 1.95 metres from the road boundary and 700 mm from the side boundary.

The applicants have been gradually upgrading their property and the proposed carport was to finalise their original plan. It would allow covered quick and easy covered off-street car parking rather than driving to the rear of the property.

The applicants drew Councils attention to “a large number of recent carports which have been built right on or near the front boundaries in our area”.

Material Considered

1. Appeal documentation and letter of explanation of the grounds for appeal lodged by the applicants. The documentation included drawings showing proposed siting, and a section through the carport.
2. A letter from the adjoining owners of No 20 Alford Street advising that they do not object to construction of a double carport on the applicant’s property. It is noted that the owners do not live on site, their place of residence being at St George.
3. The tenant of no. 20, and owners of number 22, number 24 & number 19 Alford Street have provided similar letters.
4. Verbal submissions from the applicants.
5. Verbal submissions from the Council representative explaining recent changes to siting legislation, the Councils’ objectives in relation to carports within the setback distances set by legislation, and Councils’ assessment of the application. The Council maintained its objection to the proposal.
6. Council supplied an aerial view "Geoweb" map showing the subject allotment and the allotments adjoining its eastern and western side boundaries. (Nos 20 & 24 Alford Street), and some properties across the road.
7. The Standard Building Regulation 1993 and the Queensland Development Code and in particular Section 12 of the Code.
8. A “drive by” inspection of other properties in the area, on which carports had been constructed within the front setback distance, was carried out.

Findings of Fact

1. The drawings show the proposed carport will have setback distances from the front boundary of 1950 mm., with a setback from the side boundary of 700mm.
2. There is a mature tree and minor low-level shrubbery in the corner of the allotment adjoining the proposed open carport.
3. There is an enclosed double garage at the rear of the existing dwelling.
4. There are alternative on-site locations for construction of carports.
5. The allotment has an area exceeding 450 m²

6. Toowoomba City Council planning scheme does not contain alternative siting provisions for carport structures.
7. The provisions of Queensland Development Code, Part 12 applies in the assessment of this application.

Reasons for the Decision

1. The proposed siting of the carport will not meet the performance criteria of Part 12 of the Queensland Development Code.
 - a) The proposed location of the carport does not facilitate an acceptable streetscape, appropriate for –
 - b) The bulk of the building in its proposed location will obstruct outlook to the street from the adjoining dwelling No 20 Alford Street. While a tree and low shrubs are currently located within the boundaries of No 20 these are controlled by the owners, while obstruction due to a building on an adjoining property cannot.
 - c) The setback proposed is not consistent with, nor within reasonable variation from the existing road boundary set backs of the neighbouring dwelling.
 - d) The proposed location will unduly reduce the outlook and views to the street from the adjoining dwelling at No 20 Alford Street.
2. There are alternative on-site locations for a garage or carport that would comply with the acceptable solutions for siting of a carport, (i.e. Setback from the road boundary not less than 6.0 metres)
3. In view of the reasons set out above, approval of the proposal would create further undesirable precedent.
4. With one exception, the “recent carports” in the area would not meet the performance criteria and acceptable solutions of Part 12 of the Queensland Development Code. Having been approved under previous regulations, now replaced by the QDC they are not considered an appropriate precedent in the assessment of this application.

Bert Dean
Building and Development
Tribunal Referee
Date: 6 September 2004

Appeal Rights

Section 4.1.37. of the Integrated Planning Act 1997 provides that a party to a proceeding decided by a Tribunal may appeal to the Planning and Environment Court against the Tribunal's decision, but only on the ground:

- (a) of error or mistake in law on the part of the Tribunal or
- (b) that the Tribunal had no jurisdiction to make the decision or exceeded its jurisdiction in making the decision.

The appeal must be started within 20 business days after the day notice of the Tribunal's decision is given to the party.

Enquiries

All correspondence should be addressed to:

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